Supreme Court, U.S.
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No. 01-1200

In The

Supreme Court of the United States

SOUTHERN COMPANY, *et al.*,

Petitioners,

v.

RICHARD T. ALDERSON, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The Appellate Court Of Illinois, First District

BRIEF IN OPPOSITION FOR RESPONDENTS RICHARD T. ALDERSON, ROBERT A. KALLOK, AND CYRIL SMOTRILLA

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QUESTION PRESENTED

Whether the Illinois appellate court below erred in its holding, based on "many . . . factors," that petitioners "have maintained continuous and systematic business contacts with Illinois that support the assertion of general jurisdiction over them." Pet. App. 33a.

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BRIEF FOR RESPONDENTS IN OPPOSITION

Respondents, Richard T. Alderson, Robert A. Kallok and Cyril Smotrilla (hereinafter referred to as the "respondents"), respectfully pray that the Petition for Writ of Certiorari sought in this matter by "petitioners," Southern Company, Southern Energy, Inc., SEI State Line, Inc., State Line Holding Corporation, and State Line Energy, L.L.C., be denied.

Applying well-settled law to a 1500-page record, the appellate court below held that petitioners "have maintained continuous and systematic business contacts with Illinois that support the assertion of general jurisdiction over them." Pet. App. 33a. Contrary to the assertion that this holding was based on "one reason alone" (petitioners' sales to an Illinois firm), Pet. 5, in the very next sentence the court stated that it based its "conclusion on many . . . factors," as summarized earlier in its decision. Pet. App. 33a.

Petitioners' effort to present this case "starkly and without factual complexity," Pet. 5, does not match the reality of the case. All that is before this Court is an application of well-settled law to the facts of a somewhat unusual case involving related corporate entities which situated a business along a state line and then "cherry picked" from the property law, courts and other governmental services of the two states as they saw fit in running their business. This case is not an appropriate vehicle for further explication of the law of general jurisdiction, even if such explication were needed, which is hardly clear. Certiorari should be denied.

STATEMENT OF THE CASE

Contrary to Rule 14.1(g), the petition fails to discuss many of the facts material to the question presented, replicating the "grossly inadequate" statement below, Pet. App. 15a – sufficient reason to deny the petition. This statement of the case is crafted so as to both demonstrate the Rule 14.1(g) violation and provide this Court with the record summary needed to evaluate the petition even if the rule violation were to be overlooked.

A. The Petitioners' Efforts to Buy Electrical Power Plants in Illinois or Otherwise Supply the Illinois Electricity Market

Southern Company and its four wholly owned subsidiaries which appear as petitioners are engaged in the nationwide production of electricity, among other activities in the public utility industry. Pet. App. 3a, 8a.[1]

During the 1990s, the petitioners actively sought to purchase power-generating facilities in or adjacent to Illinois to serve the Illinois market. C.694; Fuller Dep. at 17.[2] For example, in 1993 and 1994 the petitioners made an unsuccessful bid to purchase the Fisk facility in Chicago from Commonwealth Edison (headquartered in Illinois). Pet. App. 6a; C.583, Harrison Dep. at 70; C.695, C.703, Fuller Dep. at 18, 51; C.783-85, Long Dep. at 54-55. In 1995, they made an unsuccessful bid to purchase the Kincaid facility from Commonwealth Edison, also located in Illinois. Pet. App. 6a-7a; C.582-83, Harrison Dep. at 65-69; C.695, Fuller Dep. at 18. In 1996, the petitioners were successful in purchasing from Commonwealth Edison the State Line Generating Station at issue in this case. That facility is located not in Illinois, but just over the border in Hammond, Indiana, close to Chicago. Pet. App. 4a-5a.

On several occasions during negotiations over these three facilities, employees of the Southern entities met with Commonwealth Edison employees in Illinois. Pet. App. 7a, 12a. As of 1999, when discovery on the jurisdictional issues

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[1] The petitioners may be referred to collectively given the ruling of the appellate court below that with regard to the acquisition and operation of the electrical power plant involved in this case, respondent State Line Energy, L.L.C. (the formal owner of the plant) was acting as a mere agent or conduit of the other four respondents, its parent companies. Pet. App. 27a-31a; *see also* Pet. App. 44a-46a. Petitioners do not seek review of this state-law ruling on the agency relationship. *See* Pet. 13 n.8.

[2] The reference "C" is the traditional designation of the common law record used on Appeal by Illinois Courts.

was conducted, the petitioners were actively pursuing the acquisition of other Illinois facilities from Commonwealth Edison. Pet. App. 7a; *see also* C.582-84, Harrison Dep. at 65-73.

B. The Petitioners' Reliance on Illinois Property, Illinois Law, the Illinois Courts, and Other Illinois Governmental Services

The State Line Generating Station sits on the western border of Indiana, abutting the state line. C.379 (aerial photo). Not all the property associated with the plant is in Indiana, however. To reach the main entrance of the power plant (on its western side), employees must drive on a private road through part of Illinois. C.380; C.733-34, 756, Owen Dep. at 30, 34-35; C.645, Harrelson Dep. at 20. The petitioners own an Illinois property interest in this entrance road. Pet. App. 11a; C.732-34, Owen Dep. at 29-32; C.743-44.

Apart from this Illinois real estate interest, the petitioners own and store a large supply of spare parts for the plant (200 to 225 pallet loads) at a warehouse in Illinois. Pet. App. 11a; C.732-43, Owen Dep. at 26-27, 71-73; C.776-77, Long Dep. at 24, 26-27. The petitioners store this property in Illinois not because they lack storage space in Indiana but because under Illinois law they owe no tax on the property. By not storing the property in Indiana they are able to legally avoid $90,000/year in Indiana taxes. C.732-33, 745, Owen Dep. at 28-29, 78-79.

The petitioners have also relied on Illinois law to attempt to avoid regulation of their power operations under Indiana law. Even though the State Line Generating Station is technically located in Indiana, the petitioners argued that the Indiana regulators should assert no jurisdiction over the Power Plant because the power it produced would be consumed in Illinois, not Indiana, so that "Illinois, in effect, would review State Line Energy's transactions through its regulation of Commonwealth Edison." Pet. App. 5a-6a; *see also* C.446-53.

In significant respects the State Line Generating Station is actually operated from Illinois. It is electronically linked with a Commonwealth Edison facility in Illinois, so that Illinois technicians may directly regulate the megawatt output at any given moment. C.776, Long Dep. at 17-20; C.734-37; Owen Dep. at 37-41. Likewise, Commonwealth Edison technicians located in Illinois handle the task of reporting environmental data on the plant to regulatory authorities, receiving the data via modem from monitoring equipment located in the station. C.779, Long Dep. at 29-30.

The petitioners also rely on Illinois law, and in one instance on the Illinois courts, for enforcement of the contracts relating to their ownership and operation of the State Line Generating Station all of which were negotiated and signed in Illinois. All but one of the six contracts between the petitioners and Commonwealth Edison provide that the terms of the agreement are enforceable solely under Illinois substantive law. Pet. App. 4a-5a. (Only one contract specifies that Indiana law controls. Pet. App. 5a.) One contract – the Coal Supply Agreement, requiring that Commonwealth Edison provide the Petitioners with all the coal they need to run the plant – designates the Illinois courts as the sole forum in which a dispute under the contract can be brought. Pet. App. 4a; C.515; C.574-76, Harrison Dep. at 36-41; (Even though the plant is located in Indiana, no contract identifies Indiana as the sole forum in which a dispute can be brought.)

The petitioners have also used Illinois governmental services in connection with the plant. The plant uses Chicago's sewage disposal system; the fact that it is technically in a different state does not prevent the plant from receiving this Illinois governmental service. Pet. App. 11a; C.736, Owen Dep. at 44. Likewise, immediately following the plant explosion that triggered the injuries in this case, the Chicago fire and police departments responded to the facility, driving to the main entrance on the same private road located in Illinois as to which the petitioners hold a property interest. Pet. App. 11a; C.734, 736-37, 756, Owen Dep. at 34-35, 44-45, 121.

There are other close connections between the plant and Illinois. For example, as soon as the petitioners purchased the State Line facility, they established a Chicago post office as an official address. C.730, Owen Dep. at 20. In one contract, that post office box address was listed as an address to which notices under the contract could be sent. Pet. App. 5a. Many of the employees who run the facility live in Illinois, including one of its top managers and one of the employees who was injured in the plant explosion and brought this case. C.434-36; C.727, 731, 747, Owen Dep. at 6, 22, 86-87. The petitioners advertise in Illinois and have had a booth or exhibit at numerous conferences in Chicago. Pet. App. 8a; C.654, 743, C.786, Long Dep. at 60. Last but not least, virtually all of the revenue received from the State Line Generating Station by the petitioners, approximately $20 to $25 million per year, comes from Commonwealth Edison's purchase of the plant's output for resale in Illinois, which will continue to be the case for at least a 15-year period. The petitioners have known from the beginning that Commonwealth Edison's right to buy the output of the plant for the purpose of resale to Illinois consumers was an essential aspect of their purchase of the plant. Pet. App. 11a; C.454-86; Harrelson Dep. at 10, 12, 15; C.643-44; Owen Dep. at 7; C.727.

C. The Petitioners' Objections to Personal Jurisdiction, and the Decisions Below[3]

On July 28, 1998, an explosion occurred at the State Line Generating Station owned by the petitioners that injured a number of employees, including respondents, leading respondents to file suit against the petitioners and Commonwealth Edison in Illinois state court. Pet. App. 2a, 38a. The

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[3] For simplicity, this summary discusses only the motions and appeals brought by the five petitioners who appear as petitioners. It does not discuss the rulings dismissing from the litigation several other corporate affiliates of the petitioners. Likewise, it does not discuss the grounds on which the courts below refused to find the existence of personal jurisdiction.

petitioners timely moved to dismiss for lack of personal jurisdiction. Pet. App. 2a.

Following substantial discovery, Pet. App. 3a, the trial court found that it possessed personal jurisdiction over the petitioners because they were "doing business" in Illinois within the meaning of the relevant Illinois jurisdictional statute, in assertion of general jurisdiction did not violate the federal Constitution. Pet. App. 13a-14a, 40a-46a.

The petitioners sought discretionary interlocutory review, which was granted. Pet. App. 14a. On appeal, despite a well-founded objection that the petitioners' brief contained a factual summary so inadequate that it violated the rules, the appellate court agreed to reach the merits. Pet. App. at 14a-15a. On the merits, it first summarized the extensive factual record concerning the contacts between the petitioners and Illinois. Pet. App. 3a-12a. Relying on that summary and then adding even further detail, the appellate court held that the petitioners were "doing business" in Illinois within the meaning of the relevant Illinois jurisdictional statute, and hence general jurisdiction existed. Pet. App. at 20a-31a.

The appellate court then addressed the federal due process issue with regard to general jurisdiction. Pet. App. at 31a-35a. Here the court cited this Court's most recent precedent on general jurisdiction, *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984), which it summarized as holding that general jurisdiction "is permitted only where the defendant has 'continuous and systematic general business contacts' with the forum." Pet. App. 33a (quoting 466 U.S. at 416).

Applying this legal test to the record of this case, the appellate court held that the petitioners "have maintained continuous and systematic business contacts with Illinois that support the assertion of general jurisdiction over them." *Id.* Explicitly relying on the detailed record summary it had just laid out, the court stated: "We base our conclusion on many of the same factors supporting our conclusion that these defendants are 'doing business' in Illinois." *Id.* The appellate court added that the petitioners' "contacts with

Illinois" could hardly "be characterized as random, fortuitous, or attenuated" in light of their 15-year contract "to commit the Power Plant's normal operating capacity to an Illinois utility exclusively for 15 years," *id.*, and concluded that "in light of their substantial activities directed at the Illinois marketplace, it is reasonable to require these defendants to litigate these actions in Illinois." Pet. App. 34a. The Illinois Supreme Court denied further review. Pet. App. 36.

REASONS FOR DENYING THE WRIT

I. THIS CASE DOES NOT PRESENT THE QUESTION STATED IN THE PETITION, AND THERE IS NO REASON TO DOUBT THE CORRECTNESS OF THE JUDGMENT BELOW

The petitioners present this case "starkly and without factual complexity" as a means of urging that it would serve as an ideal vehicle for revisiting "the permissible scope of general jurisdiction." Pet. 5. The case is so stark and simple, they insist, that it presents the general jurisdiction issue "as clearly as that issue is ever likely to be presented." Pet. 4. But the case described by the petitioners is *not this case*, as a comparison of the petition and the decision below readily demonstrates. Thus, certiorari should be denied first and foremost because the question set forth in the petition is not actually presented by this case.

The central premise of the petition, on which the question presented is explicitly based, is that the decision below asserted general jurisdiction "to adjudicate claims" arising from an accident "at a plant located outside Illinois, *solely* on the ground that much of the product of that plant is sold, outside Illinois, to an Illinois firm." Pet. i (emphasis added). This critical assertion is repeated three times in the body of the petition. *See* Pet. 5 ("the court below ruled that the Due Process Clause was satisfied for one reason alone: because the bulk of the output of the plant where the accident occurred was sold – in Indiana –

to an Illinois firm."); Pet. 8 ("the appellate court concluded" that the contract to sell the power plant's output to an Illinois company "was sufficient to establish general jurisdiction"); Pet. 10 ("The court below ruled that the fact that the bulk of the Hammond plant's output was sold to an Illinois firm was sufficient, under the Due Process Clause, to permit Illinois courts to assert general jurisdiction over petitioners.")

However, the court below explicitly held the opposite, as part of its analysis of whether the petitioners could be subjected to general jurisdiction under Illinois law on the basis that they were "doing business" in Illinois. Pet. App. 20a-26a.[4] Here, the court noted that under Illinois precedent dating back more than a decade and a half, even

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[4] These pages set forth the bulk of the court's analysis of the "general jurisdiction" issue. When the court later reached the federal due process issue, it merely set forth the applicable legal standard, held that the legal standard was met on this record, and referred back to the "many . . . factors supporting our conclusion that these defendants are 'doing business' in Illinois," Pet. App. 33a, which the court had already covered at Pet. App. 3a-12a, 20a-26a. The rationale for the court's extended treatment of the state-law "doing business" issue, and its shorthand treatment of the federal due process issue, is clear on this record. As the petitioners correctly observed in their brief below, "[t]he Illinois Supreme Court has held that 'doing business' pursuant to 735 ILCS 5/2-209(b)(4) is *not* co-extensive with the federal 'minimum contacts' standard; rather, a separate and more stringent standard is to be applied by Illinois courts. What constitutes doing business is a *high* standard." Brief and Argument of Defendants-Appellants in No. 99-3015 (App. Ct. Ill., 1st Dist.), filed December 29, 1999, at 10 (citations omitted). The court below agreed with the petitioners on this point. Pet. App. 20a. Thus, it focused its attention on the dispositive issue, whether the more stringent state-law "doing business" standard was met on this record. Once it ruled in favor of respondents on that issue, the conclusion that the less stringent federal due process standard was met followed automatically and required little additional analysis.

"substantial revenues from sales in Illinois are not enough to satisfy the 'doing business' standard in cases not involving product defects." Pet. App. 22a (citing *National Gas Pipeline Co. v. Mobil Rocky Mountain, Inc.*, 155 Ill.App.3d 841, 843, 508 N.E.2d 211, 213 (1986); and *Rokeby-Johnson v. Derek Bryant Insurance Brokers, Ltd.*, 230 Ill.App.3d 308, 318-19, 594 N.E.2d 1190, 1198 (1992)). The court then held that "[b]ecause plaintiff's causes of action here do not involve injuries resulting from the sale of State Line Energy's product," the exemption for product liability cases did not apply here – so that general jurisdiction could *not* be found based solely on sales to an Illinois firm. Pet. App. 23a.

The fact that the court below explicitly held that under controlling Illinois law the petitioners' sales to an Illinois firm were *not* sufficient to establish general jurisdiction is enough to show the error of the assertion that the decision below rested "solely on the ground that much of the product of that plant is sold, outside Illinois, to an Illinois firm." Pet. i. Following this holding the court went on to note the ample other evidence (summarized earlier in its decision, Pet. App. 3a-12a), above and beyond the sales to an Illinois firm, that the petitioners had been "doing business" in Illinois and hence were subject to the general jurisdiction of the Illinois courts. Pet. App. 23a. This evidence, which is also summarized on pp. 1-5, *supra*, convinced the court that "State Line Energy is more like a resident of Illinois than most out-of-state businesses," Pet. App. 23a, and "that State Line Energy was 'doing business' in Illinois," Pet. App. 26a – as were the other petitioners, using State Line Energy as an agent. Pet. App. 27a-31a; see also note 1, *supra*. In finding the less stringent federal due process standard met, see note 3, *supra*, the court reiterated that "many . . . factors" (discussed earlier) supported its conclusion that "in light of their substantial activities directed at the Illinois marketplace, it is reasonable to require these defendants to litigate these actions in Illinois." Pet. App. 33a-34a. The appellate court's reliance

on a wide range of evidence in reaching its ultimate conclusion on the general jurisdiction issue could hardly be clearer.[5]

In sum, the "stark" and factually simple issue that the petition asserts this case turns on does not exist. All that is involved here is the appellate court's careful application of a settled legal test to the facts contained in a 1500-page record, which it addressed on a dozen pages of its opinion. This Court should therefore deny certiorari on the basis that the question set forth in the petition is not actually presented by this case.

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[5] Ignoring all the points discussed in text, in a cryptic footnote the petitioners maintain that "the only fair reading of the opinion of the appellate court" is the petitioners' sales to a firm in Illinois were sufficient for general jurisdiction, given that the fact of those sales was referenced "repeatedly" by the appellate court. Pet. 10 n.7. But presumably a fair reading of the opinion would note the appellate court's holding that under controlling Illinois law, general jurisdiction *may not* be found based solely on sales to an Illinois firm. Pet. App. 22a. Obviously, the petitioners' reading is not a fair reading of the opinion, much less the *only* fair reading.

In this footnote the petitioners dismiss the "other facts" discussed on twelve pages of the opinion (*see* Pet. App. 3a-12a, 23a, 33a) on the theory that all the appellate court did was "occasionally mention" these facts, and it supposedly "gave no indication whatever that it would have reached a different conclusion in the absence of any of these facts." Pet. 10 n.7. This theory attacks the professional competence of the court below. Any petition for certiorari that depends for its plausibility on the theory that an appellate court set forth twelve pages of factual analysis for no reason should be denied outright. In any event, the appellate court *did* indicate that it would reach a different conclusion in the absence of the evidence summarized at pp. 1-5, *supra*, when it ruled that absent such evidence it would be constrained under Illinois law to hold that there was no general jurisdiction on the basis merely of sales to an Illinois firm. Pet. App. 22a-23a.

II. CONSIDERATION OF THE ACTUAL FACTS OF RECORD DEMONSTRATE THAT THERE IS NOTHING CONTROVERSIAL ABOUT ILLINOIS' TAKING JURISDICTION IN THIS CASE

Despite being warned by the Illinois Appellate Court that their brief "omits most of the facts relevant to the issues raised here and essentially contains only those facts which favor appellants' [petitioners'] position," and that their "statement of facts is grossly inadequate," petitioners offer this Court a woefully inadequate statement of the actual facts of the case and the legal standard employed by the Illinois Appellate Court, and create a claim of confusion in the lower courts only by misstating the nature of the case. When the facts are fully and fairly stated, the case for personal jurisdiction is compelling.

A. The Conduct of the Petitioners Amounted to a Joint Undertaking or Even De Facto Partnership in Connection with the Operation of this Power Plant.

Petitioners' sole question presented is whether Illinois courts may exercise personal jurisdiction over the owners of an out-of-state power plant arising from an accident outside of Illinois "solely on the ground that much of the product of that plant is sold, outside of Illinois, to an Illinois firm." The fact is, however, that the Illinois Appellate Courts' decision upholding jurisdiction as to petitioners, while holding that jurisdiction was lacking as to other defendants in the same corporate family, was based on a set of facts that is missing from the petition for certiorari. *Alderson v. Southern Co.*, 321 Ill.App.3d 832; 747 N.E.2d 926. When those facts are acknowledged, the propriety of personal jurisdiction in this case is overwhelmingly clear.

Like many personal jurisdiction cases, the facts are crucial, and the facts that were undisputed in the Appellate Court are these. The lawsuit arose when plaintiffs were injured in a coal dust explosion at the State Line Generating Station in Hammond, Indiana, referred to as "Power Plant"

in the Appellate Court opinion and hereinafter. 321 Ill.App.3d at 836, 747 N.E.2d at 930 (Pet. App. at 2a). Prior to April 17, 1996, the Power Plant was wholly owned by the Commonwealth Edison Company of Indiana, which itself was wholly owned by Commonwealth Edison, an Illinois company.

In 1996, petitioners and Commonwealth Edison agreed to enter into what amounts to a de facto partnership involving both Indiana and Illinois. In order to understand the relationship, it is important to know that whereas the front door of the Power Plant was in Indiana, the road leading into it was in Illinois. In fact, virtually the sole means of ingress and egress to the Power Plant was an Illinois road – i.e., a road located in Illinois leading to the Power Plant that was maintained and controlled by Illinois. The Power Plant secured Illinois easements to assure that ingress and egress was possible. In sum, the Power Plant was located precisely on the border of the two states, and its sole function was to furnish power for Illinois. The Opinion of the Appellate Court describes in detail the interaction between Commonwealth Edison and the petitioners to clearly indicate that the Power Plant was a joint effort.

B. The Sole Function of the Petitioners' Undertakings with Commonwealth Edison was to Deliver Electricity to Illinois.

The sole function was set forth in the purchase agreement between State Line Energy and Commonwealth Edison. The agreement required State Line Energy to supply all of the Power Plant's electrical power exclusively to Commonwealth Edison for 15 years. 321 Ill.App.3d at 837, 747 N.E.2d at 931 (Pet. App. at 4a). State Line Energy, the purchaser partner in this de facto relationship, was an Indiana limited liability company established for one purpose: i.e., to own the power plant and to honor the contract with Commonwealth Edison, the Illinois company. 321 Ill.App.3d at 837, 747 N.E.2d at 931 (Pet. App. at 3a). At the time of the accident, all of the employees at the Power Plant were on the

payroll of Southern Energy Resources, one of the companies in the Southern Company "family."

Not only was the Power Plant dedicated to supplying power exclusively to Commonwealth Edison in Illinois, but Commonwealth Edison also retained title to transmission equipment on the premises of the Power Plant. Thus, the relationship of State Line Energy and Commonwealth Edison was this: State Line Energy owned the Power Plant while Commonwealth Edison owned the transmission equipment in the plant. It was this equipment that generated the electricity which went exclusively to Illinois. 321 Ill.App.3d at 837, 747 N.E.2d at 931 (Pet. App. at 4a).

C. Petitioners Specifically, Explicitly and Repeatedly Sought Protection of Illinois Law

The sales transaction and the Power Purchase agreement between State Line Energy and Commonwealth Edison was intended to assure that Illinois would receive electricity and that Illinois law would govern any dispute between the parties. In fact, the parties executed two separate agreements, an Asset Sale Agreement and a Power Purchase Agreement. They deliberately executed these documents in Illinois, and both parties specifically agreed in those agreements that Illinois law would govern. 321 Ill.App.3d at 837, 747 N.E.2d at 931 (Pet. App. at 4a). Thus, State Line Energy deliberately and explicitly invoked the protections of Illinois law with respect to the sale and the operation of the Power Plant.

But, this was not the full extent of the cooperative venture between State Line Energy and Commonwealth Edison. The two parties entered into a third agreement, called the Coal Supply Agreement, more than a year after the Asset Sale and Power Purchase Agreements were signed. 321 Ill.App.3d at 837, 747 N.E.2d at 931 (Pet. App. at 4a). The Coal Supply Agreement bound Commonwealth Edison to supply all of the coal needed to fuel the Power Plant and thereby generate electricity for Illinois. In substance, the Illinois company agreed to supply all of the coal to State

Line, in order to assure that State Line could generate all of the electricity that Commonwealth Edison wanted for Illinois. As in the earlier agreements, the parties specifically and explicitly provided in the Coal Supply Agreement that Illinois law would govern the contract. The intent of the parties was clear: to assure that Illinois law governed this cooperative undertaking and effectively the running of the Power Plant.

In the month before the accident giving rise to this lawsuit, Commonwealth Edison entered into a Training Services Agreement with State Line Energy. Commonwealth Edison agreed to provide emergency response training to State Line Energy. The training was to be provided in Illinois, and Illinois law was explicitly chosen to govern the agreement. 321 Ill.App.3d at 838, 747 N.E.2d at 932 (Pet. App. at 5a). In addition, Commonwealth Edison agreed to a consulting arrangement with State Line Energy in which all tests conducted by Commonwealth Edison would be done in Illinois. C.738, Owen Dep. at 49.

From the time the Power Plant was sold to State Line Energy until the explosion, State Line Energy had sought the protection of Illinois law with respect to every aspect of the Power Plant's operations. The only time in which State Line Energy relied upon Indiana law was with respect to a Consulting Services Agreement with Commonwealth Edison in which Commonwealth Edison undertook to provide consulting services to State Line Energy. 321 Ill.App.3d at 838, 747 N.E.2d at 932 (Pet. App. at 5a).

Not only did State Line Energy avail itself of Illinois law with respect to the sale and operation of the Power Plant, but it went further and informed Indiana officials that it desired to be exempt from Indiana law and to be regulated by Illinois law. Specifically, at the time it purchased the Power Plant, State Line Energy filed a petition with the Indiana Utility Regulatory Commission requesting that the Commission refrain from asserting jurisdiction over the Power Plant. 321 Ill.App.3d at 838, 747 N.E.2d at 932 (Pet. App. at 5a). The reason offered by State Line Energy is critical. State Line Energy informed the Indiana Commission that it would not

sell to wholesale or retail customers in Indiana and specifically asserted that it was submitting to the jurisdiction of the Illinois Commerce Commission which "is currently holding hearings on the proposed transaction and impacts in Illinois where most, if not all, of the Plant's output will be utilized." Not only did State Line Energy represent to the Indiana Commission that the Illinois Commerce Commission would examine the impacts of the Power Plant on Illinois, but State Line went even further and told the Indiana Commission that it "was subject to the regulation of the Federal Energy Regulatory Commission and that Illinois, in effect, would review State Line Energy's transactions through its regulation of Commonwealth Edison." 321 Ill.App.3d at 838, 747 N.E.2d at 932 (Pet. App. at 6a). The latter representation was an explicit recognition that Illinois was regulating the Power Plant through Commonwealth Edison.

In addition, petitioners decided to store the Power Plant's spare parts in Illinois rather than Indiana, specifically to avail itself of the more favorable tax treatment available to it in Illinois. The record clearly established that petitioners owned and stored in Illinois between 200 and 225 pallet loads of spare parts. [Pet. App. at 11a] If petitioners had stored these parts in Indiana, they would have had to pay $90,000 in Indiana taxes. [C.732-33, 745] But, rather than pay these taxes and submit their property to Indiana jurisdiction, petitioners deliberately chose to locate in Illinois and to keep the Power Plant's spare parts within the specific jurisdiction of Illinois.

In addition, the Power Plant deliberately chose to have the City of Chicago take responsibility for sewage disposal from the Power Plant. Petitioners could have opted to have Hammond, Indiana take this responsibility, but instead they willingly, knowingly and deliberately availed themselves of Illinois law and placed themselves in the hands of the City of Chicago. C.736, Owen Dep. p. 44.

It is difficult to imagine how companies could have more clearly availed themselves of Illinois law and deliberately subjected themselves to Illinois jurisdiction.

D. The Output of the Power Plant was Directly Controlled from a Facility Inside Illinois

The common undertaking between petitioners and Commonwealth Edison did not consist merely of these agreements. Not long after the Coal Supply Agreement was signed, the two parties signed a "Facilities Agreement" that was intended to assure that State Line Energy would operate the Power Plant in order to provide the power that Illinois required and that the State Line-Commonwealth Edison arrangement was set up to assure. Like the three other agreements that preceded it, this one again provided that Illinois law would govern the relationship between the two parties. Pursuant to this Agreement, a dedicated telephone line was established between the Power Plant and Commonwealth Edison's offices in Illinois. 321 Ill.App.3d at 838, 747 N.E.2d at 932 (Pet. App. at 5a). The dedicated telephone line enabled Commonwealth Edison to inform State Line Energy of its electricity requirements and also to enable Commonwealth Edison to communicate and exercise some control over the way in which the facilities of the Power Plant were managed as the various agreements described above provided. 321 Ill.App.3d at 838, 747 N.E.2d at 932 (Pet. App. at 5a). The agreements and the dedicated line demonstrated that the joint undertaking was not simply a matter of paper agreements. Rather, State Line Energy and Commonwealth Edison worked in tandem with Illinois law governing all of the conduct and with Commonwealth Edison in Illinois having legal control over all of the equipment in the Power Plant and a legal right to assure that the facilities were operated to provide Commonwealth Edison with the Illinois power it required.

Moreover, it is clear that Commonwealth Edison in Illinois could, through the use of the dedicated phone line and also through a signaling mechanism which originated in Illinois, directly controlled the hour to hour output of the plant. C.734-37, Owen Dep. p. 37-41; C.775-77, Long Dep. pp. 19-20. Thus, in furtherance of the joint undertaking and cooperative venture between them, Commonwealth Edison,

actually controlled the operation of the Power Plant from Illinois.

E. Petitioners Omit Almost All Relevant Facts from Their Petition

All of these facts are set forth, as the citations indicate, in the careful Opinion of the Illinois Appellate Court. Virtually none of them are found in the Petition for Certiorari. Like the brief filed by petitioners in the Illinois Appellate Court, the petition for certiorari "omits most of the facts relevant to the issues raised here and essentially contains only those facts which favor appellants' [petitioners'] position," and their "statement of facts is grossly inadequate." 321 Ill.App.3d at 844-45, 747 N.E.2d 937, Pet. App. 14-75(c).

Two more facts not mentioned in the petition for certiorari warrant mention. The first is that State Line Energy advertised itself in Illinois. 321 Ill.App.3d at 840, 747 N.E.2d at 933 (Pet. App. at 8a). The second is that State Line Energy not only advertised in Illinois, but it succeeded in attracting and retaining many Illinois residents to work in the Power Plant. 321 Ill.App.3d at 837, 747 N.E.2d at 931 (Pet. App. at 3a).

F. The Case for Personal Jurisdiction is Overwhelming

On these facts, the case for personal jurisdiction is incredibly strong. State Line Energy was involved in a joint undertaking with Commonwealth Edison. While State Line Energy owned the Power Plant, Commonwealth Edison owned the transmission equipment needed to generate electricity. Every important agreement between the de facto partners was intended to provide the Illinois company with an ability to exercise control over the conduct of the Power Plant in order to assure that the sole purpose of the Power Plant – i.e., to supply power to Illinois – was accomplished. State Line Energy explicitly, deliberately and repeatedly availed itself of Illinois law, and went so far as to ask Indiana not to regulate it so that it could be regulated and monitored

by Illinois. It advertised, recruited and hired workers from Illinois. On these facts, there can be no doubt that the Due Process Clause is satisfied by the exercise of jurisdiction over State Line Energy.

Respondents submit that under the clear guidance of this Court's decisions, the exercise of jurisdiction on these facts cannot be questioned. *See, e.g., Republic of Argentina v. Weltover*, 504 U.S. 607, 619-620 (1993) ("we find that Argentina possessed 'minimum contacts' that would satisfy the constitutional test. By issuing negotiable debt instruments denominated in United States dollars and payable in New York and by appointing a financial agent in that city, Argentina 'purposefully availed itself of the privilege of conducting activities within the [United States].' *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985), *quoting Hanson v. Denckla*, 357 U.S. 235, 253, (1958)").

G. The Illinois Court Applied Section 2-209 of the Illinois Code, *see* 735 ILCS 5/2-209(b)(4) (West 1998), in a Narrow, Careful and Prudential Way

Section 2-209 of the Illinois Code, *see* 735 ILCS 5/2-209(b)(4) (West 1998), provides in relevant part: "(b) A court may exercise jurisdiction in any action arising within or without this State against any person who: * * * (4) Is a natural person or corporation doing business within this State." The court found that this section of the Code provided jurisdiction over petitioners.

When we turn to the Illinois Appellate Court's reasoning, it is apparent that it bears no relationship to the wild, elastic approach to jurisdiction suggested in the Petition. In truth, the Illinois Court took a very narrow view of jurisdiction under section 2-209(b)(4), and was very explicit about its care in using the section. The Court wrote as follows:

> *The "doing business" standard is quite high and requires a showing that the defendant is conducting business of such character and extent as to warrant the inference that the corporation has subjected itself to the jurisdiction and laws of the forum.* * * * The defendant

> must transact business in Illinois "not occasionally or casually, but with a fair measure of permanence and continuity." * * * Thus, the statute requires a "course of business" or "regularity of activities" as opposed to isolated or sporadic acts. * * *

321 Ill.App.3d at 848-49, 747 N.E.2d at 940 (Pet. App. at 20a). (emphasis added).

Having set the bar high for a showing of personal jurisdiction based on "doing business," the Appellate Court found that petitioners clearly were doing business in Illinois. This finding is hardly surprising and is not inconsistent with any case cited by petitioners. The following facts, unique to this case, distinguish it from any that petitioners cite:

1. The sole purpose of the Power Plant was to provide electricity to Illinois; it did no other business and had no other purpose. The Power Plant was controlled from Illinois through a dedicated phone line and signaling system.

2. State Line Energy was the Indiana owner of the Power Plant, but Commonwealth Electric was the Illinois owner of the transmission equipment at the Power Plant. The spare parts for the Power Plant were kept in Illinois.

3. State Line Energy entered into various agreements in which it sought and obtained the benefit of Illinois law and was required to operate the Power Plant in accordance with the wishes of Commonwealth Edison.

4. State Line Energy affirmatively requested exemption from Indiana law so that it could be regulated by Illinois through its de facto partner, Commonwealth Edison. And State Line Energy deliberately chose to subject itself to Illinois rather than Indiana taxation.

5. State Line Energy affirmatively advertised in Illinois, recruited Illinois workers to work in the Power Plant, had a work force with many Illinois workers, and the explosion at the Power Plant put these workers at risk.

On these facts, there can be no doubt that petitioners did business in Illinois. In fact, they did business nowhere else. Thus, exercise of jurisdiction is completely consistent with

this Court's decisions in *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), and *Helicopteros Nacionales de Columbia v. Hall*, 466 U.S. 408, 416 (1984). Petitioners informed Indiana that they would not sell in Indiana and thus would do no business there and should not be regulated there. At all times, both in their agreements and in their running of the Power Plant, petitioners recognized that they were doing business only in Illinois, submitting to Illinois law, and seeking exclusive Illinois jurisdiction.

H. There is Nothing Unusual in this Case Other than the Strength of the Facts Supporting Jurisdiction

When the facts of the case are carefully examined as they were by the Illinois Appellate Court and they are in this Opposition, it is clear that there is nothing surprising in this fact-specific decision of the Illinois Appellate Court and there is no need for this Court to waste its important review function on this case.

III. NOTHING IN THE BODY OF THE PETITION MERITS A GRANT OF PLENARY REVIEW

Even setting aside the fact that the question presented by the petitioners is not posed by this case, there is nothing set forth in the body of the petition that merits a grant of plenary review.

1. The petitioners offer two main reasons for review. First, they contend that the judgment below is in error, because it supposedly cannot be reconciled with this Court's decisions in *Perkins v. Benguet Consolidated Mining Co.*, 432 U.S. 437 (1952), and *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 416 (1984). Pet. 10-15. However, this contention explicitly depends on the hypothesis that the appellate court held "that the fact that the bulk of the Hammond plant's output was sold to an Illinois firm was sufficient, under the Due Process Clause, to permit Illinois courts to assert general jurisdiction over petitioners." Pet. 10. As already explained, that hypothesis is incorrect.

The petitioners make no effort to argue that, if the result below actually turned on the appellate court's application of settled law to an extensive factual record, review would still be warranted. Indeed, they concede that typical "multi-factor" cases, in which courts "assert general jurisdiction . . . by concatenating a large number of contacts and concluding that in combination they are sufficient to establish general jurisdiction . . . are seldom well suited for this Court's review, because they are unlikely to provide clear guidance for future cases in which a different combination of factors is present." Pet. 5. Of course, this is one of those typical cases. The decision below turned on a multi-factor, record-intensive analysis. The court below held that the petitioners "have maintained continuous and systematic business contacts with Illinois that support the assertion of general jurisdiction over them" based "on many . . . factors." Pet. App. 33; *see also* Pet. App. 3a-12a, 20a-26a. The petitioners' own evaluation of what makes for a certworthy case calls for the denial of certiorari here.

In any event, no basis to question the correctness of the judgment below is evident. The petition contains no analysis of the actual record facts, and the facts summarized in the decision below and in this opposition easily support a finding of general jurisdiction under well-settled law.

From 1993 through 1999, when discovery closed, the petitioners were actively engaged in an effort to purchase electrical power plants in or near Illinois, making a significant number of trips to Illinois in the process. In 1996, they were successful in purchasing the State Line Generating Station at issue in this case. In purchasing that plant situated on the Illinois-Indiana border, and afterwards, the petitioners "cherry picked" the property, law, courts, and other governmental services of Illinois and Indiana as best suited their interests. On most of the contracts governing the purchase and operation of the plant, they relied on Illinois substantive law for enforcement; in one contract they designated Illinois as the exclusive forum for resolving any disputes. On yet another contract, the petitioners opted to rely on Indiana

substantive law. With regard to real estate for plant operations, the petitioners used entirely Indiana land, except that they obtained an Illinois property interest in the private road leading to the main entrance, and they stored spare parts on Illinois land to avoid $90,000/year in Indiana taxes. To avoid the jurisdiction of Indiana regulators, the petitioners represented that their acquisition of the plant would in effect be regulated by Illinois regulators, through regulation of Commonwealth Edison – which is consistent with the fact that Commonwealth Edison technicians routinely control plant functions, and monitor the plant for environmental compliance, from an office located in Illinois. The plant uses the Chicago sewage disposal system and, in emergencies, Chicago fire and police department services (as illustrated by their response on the day of the explosion).

Based on these and many other business connections between the petitioners and Illinois, the appellate court observed that State Line Energy (the Southern entity that formally owns the plant) is "more like a resident of Illinois than most out-of-state businesses." Pet. App. 23a. It went on to hold that the activities of the petitioners in acquiring the plant and operating it through State Line Energy, serving as their agent, constituted " 'continuous and systematic general business contacts' with the forum" within the meaning of the controlling *Helicopteros* test. Pet. App. 33a (quoting 466 U.S. at 416).

The petitioners assert that the contacts between them and the forum state "are, if anything, less significant" than the contacts found inadequate in *Helicopteros*. Pet. 13. But most of the contacts of potential significance that the *Helicopteros* decision observed which were *not* present in that case, *see* 466 U.S. at 411, are present in this case:

- In *Helicopteros* this Court noted that the defendant had never "sold any product that reached Texas." By contrast, the petitioners are selling essentially the entire output of the plant, worth $20 to $25 million a year, to Commonwealth Edison for immediate resale in Illinois, and are committed to doing so for a 15-year period.

- In *Helicopteros* this Court noted that the defendant "never solicited business in Texas." By contrast, the petitioners actively solicited business in Illinois, in person, over a multi-year period, leading to the purchase of the very power plant involved in this case.

- In *Helicopteros* this Court noted that the defendant "never signed any contract in Texas." By contrast, in the course of purchasing and operating the power plant involved in this case, the petitioners negotiated and signed six contracts in Illinois, five of which rely on substantive Illinois law for their enforcement, and one of which designates the Illinois courts as the exclusive forum for the resolution of any disputes.

- In *Helicopteros* this Court noted that the defendant "never has owned real or personal property in Texas." By contrast, the petitioners have owned or leased both real and personal property in Illinois (the property interest in the road running to the main entrance and the spare parts stored in Illinois to save taxes, and the Chicago post office box rented as an official address for the power plant).

2. As a second reason for review, the petitioners argue that the state and lower federal courts are deeply divided about the permissible extent of general jurisdiction. Pet. 15.

Pointing to the opinion of commentators that confusion exists in this field, the petitioners suggest that the test laid out by this Court in *Helicopteros*, requiring "continuous and systematic" contacts, is insufficiently definite, so that this Court should further clarify the test. Pet. 15-16, 23-25. But the imprecision attacked by the petitioners is an inherent feature of the traditional test, and there is no basis to assume that the test can be materially improved upon. One of the leading scholars on the subject of general jurisdiction has recently put the point this way:

> [G]iven the variety of business activities that can occur in a forum and our uncertainties about the constitutional underpinnings of the doctrine, devising a more definitive standard is just too hard. Courts and legislatures discovered early on that it

> is hard to define "doing business" with any precision. The best they can do is to indicate that continuity and perhaps substantiality are important – after that, things pretty much come down to a question of degree.[6]

As to their principal claim of conflict, the petitioners assert that this Court should review what they call "settled Illinois law," supposedly reflected in the decision below, "that even when a defendant has no physical presence whatever in a state, sales to a firm incorporated in that state can establish general jurisdiction." Pet. 17. As already explained, settled Illinois law is actually to the contrary, and the decision below rested on no such holding. See pp. 8-9, *supra*.[7]

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[6] Mary Twitchell, *Why We Keep Doing Business With Doing-Business Jurisdiction*, 2001 U. Chi. Legal Forum 171, 194-95 (2001); *see also id.* at 196 ("doing-business jurisdiction generally does little harm"). Compare Pet. 2 (asserting without explanation that the issue of general jurisdiction "is perhaps the single most important unresolved issue in the law of civil procedure"). Professor Twitchell's suggestion that, as a practical matter, the general jurisdiction doctrine is best left alone is notable in that it comes from a scholar who has been quite critical of the conceptual coherence of current doctrine. *See* Mary Twitchell, *The Myth of General Jurisdiction*, 101 Harv. L. Rev. 610 (1988).

[7] The petitioners claim that "settled Illinois law" permits a finding of general jurisdiction on mere sales within Illinois, but in support they cite only product liability cases, Pet. 17 n.11, ignoring that such cases are an exception to the general rule, applied in the decision below, barring a finding of general jurisdiction merely based on sales. Pet. App. 22a-23a.

In addition, the petitioners' current assertion that "settled Illinois law," Pet. 17, is supposedly "extreme" on this point, Pet. 19, is inconsistent with their observation in the Illinois Supreme Court that: "Before the opinion below, Illinois courts carefully applied federal due process limitations, and always made sure that 'doing business' for purposes of 'general' jurisdiction meant that the nonresident corporation conducted business in

Thus, the conflict in the lower courts suggested in the petition, Pet. 17-22, is irrelevant to this case.

IV. THAT THERE IS PERSONAL JURISDICTION OVER PETITIONERS IS INDISPUTABLY CORRECT, AND THERE IS NO CASE THAT PETITIONERS CITE THAT IS INCONSISTENT WITH THE DECISION OF THE ILLINOIS APPELLATE COURT.

There is no case cited by petitioners that has facts similar to the instant case. All of the cases cited by petitioners as taking an expansive view of personal jurisdiction are distinguishable from the instant case. There is no court of which we are aware that has held or suggested that it would hold that personal jurisdiction cannot be exercised when the following facts are present.

1. An out-of-state company is created for the sole purpose of providing electricity to the forum state, and the company did no other business and had no other purpose. Control over the power generation is exercised from the forum state.

2. The out-of-state company entered into cooperative venture with a forum state company in which the out-of-state company owned a power plant while the forum state company owned all the equipment at the Power Plant, and the spare parts for the Power Plant were kept in the forum state.

3. The joint operators of this Power Plant entered into various agreements in which both sought and obtained the

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Illinois of such a character and to such an extent as to warrant the inference that it had purposefully availed itself of the benefits and protection of the laws of Illinois. To assure adherence to these constitutional limitations, Illinois required continuous, permanent, ongoing and systematic contacts in the forum to support general jurisdiction." Petition for Appeal as a Matter of Right or, in the Alternative, for Leave to Appeal, filed June 13, 2001, at 9 (citations omitted).

benefit of the forum state's law and was required to operate the power plant in accordance with the wishes of the forum state company.

4. The out-of-state company affirmatively requested exemption from its home state law so that it could be regulated exclusively by the forum state. The out-of-state company sought protection of the forum state's tax laws.

5. The out-of-state company affirmatively advertised and recruited and hired employees in Illinois to the extent that many of its employees, whose sole job was to generate electricity for Illinois, resided in Illinois.

Not a single case cited by petitioners comes close to this case on its facts. Only by misstating the facts found by the Illinois Appellate Court and misstating the holding of that court can petitioners create an illusory impression of a conflict. There may be a conflict in the lower courts as to the precise scope of general jurisdiction,[8] but there is no decision that casts doubt on the existence of jurisdiction on the facts of this case. Respondents respectfully submit that there is no need for this Court to review a decision so obviously correct on its facts when there is no conflict between it and any decision of this Court or any other lower court.

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[8] For example, the petitioners assert that lower courts disagree as to whether sales in a forum state can give rise to general jurisdiction. Petition at 20. Whether or not there is actually a conflict in the lower courts as opposed to a fact-specific difference in result is irrelevant here, because the Illinois Court of Appeals was not relying simply on sales in Illinois. Unlike petitioners, the Illinois Court of Appeals was relying on all of the ties that petitioners had to Illinois, including their deliberate decisions to seek protection of Illinois law and to avoid the requirements of Indiana law. No case cited by petitioners is even close on the facts.

V. THE RECORD CLEARLY SHOWS THAT DUE PROCESS REQUIREMENTS HAVE BEEN SATISFIED IN THIS CASE.

Wholly aside from whether the Illinois Appellate Court properly found that petitioners were "doing business" in Illinois, the Illinois court plainly and clearly used this court's minimum contacts analysis to find that Due Process was satisfied in the exercise of personal jurisdiction, and there is nothing in the Appellate Court's analysis that is inconsistent with this Court's decisions or in conflict with any case cited by petitioners. Petitioners neglected to inform this Court of the alternative minimum contacts analysis which by itself supports the exercise of jurisdiction independently of the "doing business" analysis, and which petitioners do not challenge in their Petition.

Wholly aside from 2-209(b)(4) and the "doing business analysis," the Illinois Appellate Court also relied upon 2-209(c) of the Illinois Code. The Legislature added subsection (c) to section 2-209 of the Code in 1989. Since then, Illinois courts have treated section 2-209(c) as an independent basis for asserting *in personam* jurisdiction over a defendant. *Flint v. Court Appointed Special Advocates of Du Page County, Inc.*, 285 Ill.App.3d 152, 165, 674 N.E.2d 831, 841 (1996); *Allerion, Inc. v. Nueva Icacos, S.A.*, 283 Ill.App.3d 40, 47, 669 N.E.2d 1158, 1163, 218 Ill. Dec. 632 (1996). This independent ground of jurisdiction is ignored in the Petition for Certiorari even though it provides an alternative and independent ground for the decision below and is not challenged in the Petition.

It is very clear why the Petition fails to mention this independent ground for decision: i.e., the Illinois Appellate Court carefully and correctly applied the law established by this Court.

> Federal due process requires that, in order to exercise *in personam* jurisdiction over a nonresident defendant, it is necessary that the defendant have certain "minimum contacts"

with the forum state such that the maintenance of the suit there does not offend " 'traditional notions of fair play and substantial justice.' " *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 90 L. Ed. 95, 102, 66 S. Ct. 154, 158 (1945), *quoting Milliken v. Meyer*, 311 U.S. 457, 463, 85 L. Ed. 278, 283, 61 S. Ct. 339, 343 (1940). Those minimum contacts must have a basis in " 'some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.' " *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102, 109, 94 L. Ed. 2d 92, 102, 107 S. Ct. 1026, 1030 (1987), *quoting Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 85 L. Ed. 2d 528, 542, 105 S. Ct. 2174, 2183 (1985). Satisfaction of this requirement ensures that an alien defendant will not be forced to litigate in a distant or inconvenient forum solely as a result of random, fortuitous, or attenuated contacts, or the unilateral act of a consumer or some other third person. *Burger King Corp.*, 471 U.S. at 475, 85 L. Ed. 2d at 542, 105 S. Ct. at 2183.

A court conducting a federal due process analysis must consider whether (1) the nonresident defendant had "minimum contacts" with the forum state such that there was "fair warning" that the nonresident defendant may be hailed into a forum court; (2) the action arose out of or related to the defendant's contacts with the forum state; and (3) it is reasonable to require the defendant to litigate in the forum state. *Burger King Corp.*, 471 U.S. at 471-77, 85 L. Ed. 2d at 540-44, 105 S. Ct. at 2181-84; *Kalata* [*v. Healy*], 312 Ill.App.3d [761] at 768-69, 728 N.E.2d [648] at 654.

> The "minimum contacts" and "fair warning" requirements are satisfied if the defendant has purposefully directed his activities at Illinois residents, reached out beyond one state to create continuing relationships with citizens of another state, or purposefully derived benefits from its activities within the forum state. *Burger King Corp.*, 471 U.S. at 471-74, 85 L. Ed. 2d at 540-41, 105 S. Ct. at 2181-83; *Kalata*, 312 Ill.App.3d at 769, 728 N.E.2d at 655. As we discussed in connection with the "doing business" analysis, Southern, Southern Energy, State Line Holding, SEI, and State Line Energy have purposefully directed their activities toward Illinois residents, namely, Commonwealth Edison and its customers, and have reached out to create continuing relationships with those residents. * * *

321 Ill.App.3d at 856, 747 N.E.2d at 946-47 (Pet. App. at 31a-32a).

It is apparent from this analysis that the Illinois decisions are completely consistent with this Court's minimum contacts decisions, and that the decision below rests entirely and independently on a minimum contacts analysis that is not challenged in the Petition. Since petitioners do not challenge this independent ground for decision, there is no point in this Court's reviewing the decision below. This ground for decision will stand even if the "doing business" analysis is flawed, which respondents submit it is not.[9]

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[9] It is almost incredible but true that petitioners do not mention 735 ILCS 5/2-209(c) in their discussion. The Petition notes that the Illinois Court of Appeals engaged in Due Process review (Petition at 7) but fails to mention that §2-209(c) is an independent basis for jurisdiction that requires application of this Court's minimum contacts analysis.

CONCLUSION

The decision by the Illinois Appellate Court is consistent with this Court's decisions in every way. On the facts presented here, there is an overwhelming case for personal jurisdiction over petitioners. The Illinois Appellate Court carefully analyzed the evidence as to each defendant and concluded that petitioners clearly were "doing business" in Illinois. Indeed, they were de facto partners with Commonwealth Edison in a venture that only did business in Illinois. Moreover, wholly aside from whether petitioners "did business" and were subject to general jurisdiction, the Illinois Appellate Court properly found that petitioners had minimum contacts with Illinois sufficient to satisfy the Due Process Clause. This finding is not challenged in the Petition for Certiorari and provides an independent basis for jurisdiction. In sum, there is nothing in this fact-driven case that suggests any need for this Court's review.

The Petition for a Writ of Certiorari should be denied.

Respectfully Submitted,

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